

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of J.L.)	
Petitioner)	
)	
And)	CAUSE NO. 110203-73
)	
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

On August 30, 2010, Petitioner, J.L. and his parents, completed a transfer request with the Indiana High School Athletic Association (IHSAA) and requested the IHSAA make an athletic eligibility determination for the 2010-2011 school year. On December 7, 2010, the Assistant Commissioner of the IHSAA determined Petitioner to have limited eligibility until February 26, 2011 after which date Petitioner regains full eligibility.

On January 4, 2011, Petitioner sought review by the IHSAA Review Committee of the Assistant Commissioner's determination. The Review Committee conducted its hearing on January 10, 2011, and issued its decision on January 20, 2011. The decision upheld the Commissioner's determination of limited eligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ on February 1, 2011. On February 4, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee's decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the Panel. On February 15, 2011, the Panel held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

¹ The Case Review Panel (Panel) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The Panel, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Seven members were present at the meeting, including Mr. Matt Tusing (chairperson), Ms. Dana Cristee, Mr. Michael Golembeski, Mr. Keith Pempek, Mr. Matthew Rager, Mr. Marcus Robinson, and Mr. Earl Smith Jr.

FINDINGS OF FACT

1. Petitioner lives with his parents in Evansville, Indiana, and within the Evansville Harrison High School district. Evansville Harrison High School is a school operated by Evansville Vanderburgh School Corporation.
2. Petitioner attended Evansville Harrison High School (Harrison) his freshman, sophomore, and junior years (2007-2008, 2008-2009, 2009-2010). He played on the freshman basketball team as a freshman. He played on the junior varsity team as a sophomore and junior. He was a co-captain of the junior varsity team. During his junior year, he dressed 13 games for the varsity team and received limited playing time. He last participated in athletics at Harrison on February 26, 2010.
3. Petitioner maintained good grades at Harrison during his freshman year, ending the year with a 2.75 grade point average. During his sophomore and junior years, Petitioner's grades significantly declined, ending with a 2.18 grade point average.
4. During the fall of 2009, Petitioner's father and the Harrison basketball coach, Bryan Speer, discussed on the phone Petitioner's role on the team and some skill areas on which Petitioner must work.
5. In January 2010, Petitioner's mother and father met with Speer and accused Speer of not liking Petitioner. Petitioner's parents accused Speer of causing Petitioner's behavioral and educational problems by limiting Petitioner's role on the varsity team.
6. Petitioner had poor practice habits and isolated himself from his varsity-level teammates.
7. On February 9, 2010, Petitioner's parents met with Harrison principal Liz Wells and complained that the coaching staff was not treating Petitioner fairly, had failed to award playing time of which Petitioner was due, and was affecting Petitioner's self-esteem and confidence.

8. The coaching staff suspended Petitioner for two games and removed him as a starter on the junior varsity team because Petitioner used an expletive.
9. On February 22, 2010, Petitioner's parents met with Harrison principal Liz Wells and complained about Petitioner's playing time and the coach's attitude.
10. On March 1, 2010, Petitioner's parents met with Harrison principal Liz Wells and complained that the coach had treated players inconsistently. Petitioner's parents complained about Petitioner's grades. Petitioner's parents informed Wells that Petitioner's parents were transferring Petitioner to another high school.
11. Coach Speer removed Petitioner from the sectional roster because Petitioner's parents planned to transfer Petitioner to a different school.
12. In early March 2010, Petitioner's parent contacted Evansville City athletic director Paul Neidig and accused the Harrison coaches of mistreating Petitioner and requested that Neidig remove Coach Speer.
13. On April 1, 2010, Petitioner's parent met with Harrison Principal Liz Wells and complained that Petitioner was not dressing for sectional games and requested that Wells take action against Speer.
14. During June 2010, Coach Speer allowed Petitioner to play summer basketball for Harrison.
15. During June 2010, at the completion of the summer basketball period, Petitioner's father informed Coach Speer that Petitioner was transferring to Evansville Day High School.
16. Petitioner enrolled in Evansville Day High School (Day). Day allowed Petitioner to enroll upon the condition that Petitioner received tutoring in July 2010, passed the Day admission test, and retake his junior year classes. Petitioner started classes on August 16, 2010.

17. Day allows Petitioner to play on Day's junior varsity team. Petitioner plays occasionally, but only when he wants to play.
18. On August 30, 2010, Petitioner completed the student's portion of the IHSAA Transfer Report (Transfer Report) and sought full eligibility because he transferred for smaller class sizes and more individualized instruction to better prepare for college. The parents submitted the Transfer Report as a rule 19-6.2 transfer and sought a hardship exception.
19. On September 29, 2010, Harrison High School asked that the IHSAA grant Petitioner limited eligibility because Petitioner did not make a bona fide change of residence and the transfer was athletically motivated, as evidenced by complaints made to the coach and principal surrounding Petitioner's playing time on the team.
20. On December 6, 2010, Day High School asked that the IHSAA grant Petitioner full eligibility because Petitioner transferred for smaller class size and more individual instruction to better prepare for college.
21. On December 7, 2010, Assistant Commissioner Phil Gardner held that Petitioner was eligible for limited eligibility because the transfer was without a change of address and the transfer was totally within the control of the Petitioner.
22. On January 10, 2011, in response to Petitioner's request for appeal, the IHSAA Executive Review Committee (Committee) held a due process hearing wherein both the IHSAA and Petitioner presented evidence and testimony in the matter.
22. On January 20, 2011, the IHSAA Executive Review Committee upheld the determination by Assistant Commissioner Phil Gardner based on the following seven (7) Conclusions of Law:

1. *Eligibility under rule 19-6.2. [Petitioner] transferred schools without a corresponding change of residence by his parents, and under rule 19-6.2,*

without any other evidence, [Petitioner] would be entitled to limited eligibility.

2. *Eligibility under rule 19-6.1. If [Petitioner's] circumstances met one of the conditions of rule 19-6.1, then he might qualify for full eligibility, however in that situation, [Petitioner] would bear the ultimate burden of persuasion that his circumstances met one of the grounds for full eligibility under rule 19-6.1. Here, [Petitioner] does not contend that he met any of the grounds for full eligibility under rule 19-6.1, and he also failed[sic] to provide any proof that demonstrates his circumstances met any grounds for full eligibility under rule 19-6.1.*
3. *Ineligibility under rule 19-4. If there is evidence that the transfer was primarily motivated by athletic reasons, then [Petitioner] could be declared ineligible for 365 days from his enrollment at Evansville Day, under rule 19-4. The ultimate burden of proving that [Petitioner's] transfer was primarily motivated by athletic reasons is on the IHSAA. Here, there is significant evidence that the transfer appears almost exclusively athletically motivated. Throughout the 2009-10 basketball season, [Petitioner's] parents complained about Coach Speer and the Harrison coaching staff, about [Petitioner's] playing time, about [Petitioner's] unfair treatment by the coaching staff regarding his disciplinary matters regarding the "F bomb" and about Petitioner not dressing for the sectional basketball team. After [Petitioner] did not dress for the Sectional squad, [Petitioner's] parents then indicated their intention to transfer [Petitioner] out of Harrison. With these events, and the timing of the transfer, it can easily be concluded that athletics was the reason for the transfer. However, Harrison, the sending school, recommended limited eligibility, no ineligibility, and this was apparently on the belief that there was other evidence which supports [Petitioner's] contention that the transfer was prompted, at least in part by other non-athletic reasons- most likely [Petitioner's] academic struggle and [Petitioner's] parents stated belief that [Petitioner] could better address his academic difficulties at Day school. Accordingly, and based upon the recommendation of Harrison, the Committee concludes that while the transfer was athletic, it was not primarily for athletics.*
4. *Eligibility under rule 17-8. If [Petitioner's] circumstances constitute a case for setting aside the effect of the transfer rule, [Petitioner] may qualify for full eligibility; [Petitioner], however, bears the ultimate burden of persuasion that his circumstances meet the criteria under the General Hardship Rule, rule 17-8.1 or the criteria under the Transfer Hardship Rule, rule 17-8.5.*
5. *Eligibility under rule 17-8.5. If [Petitioner] demonstrates that the requirements of rule 17-8.5 have been met, [Petitioner] may have full eligibility. Under rule 17-8.5, [Petitioner] needed to show, first, that after the transfer, he continued to reside with his parents, second, that the transfer was in his best interests and there are no athletic related motives surrounding the*

transfer and third, that both principals, the sending and receiving, each signed a rule 17-8.5 Hardship Verification confirming that the transfer was in the best interest of [Petitioner] and that there were no athletic related motives surrounding the transfer. The first criteria[sic] appears satisfied because [Petitioner] continued to reside with his parents. The third criteria[sic], however, was not established because neither Harrison nor Day School signed the rule 17-8.5 Verification. And even if [Petitioner] had secured those signatures on the rule 17-8.5 Verifications, his request for full eligibility would still fail the second criteria[sic] since this Committee cannot conclude that the transfer from Harrison to Day School was either in his best interest, or that there were no athletic related motives surrounding the transfer. [Petitioner] fails to show entitlement to full eligibility under rule 17-8.5.

6. Eligibility under rule 17-8.1. If [Petitioner] demonstrates that the requirements of rule 17-8.1 have been met, [Petitioner] might qualify for full eligibility. Under rule 17-8.1, relief from the operation of an IHSA rule cannot be granted until the party seeking the eligibility, [Petitioner], establishes to the satisfaction of this Committee, through clear and convincing evidence^{FN5} [FN5 See, rule 17-8.4(d)] that each of the three questions raised by rule 17-8.1 has been answered in the affirmative.

- a. Has the student shown that the purposes of the rule will not be advanced by strict enforcement of the Transfer Rule (rule 17-8.1(a))? While the primary purpose of the Transfer Rule is to discourage and eliminate athletically motivated transfers^{FN6} [FN6 The Transfer Rule serves as a “deterrent to students who would transfer to another school for athletic reasons (such as students who would run away from or avoid an athletic conflict or discipline imposed at a prior school, or who would seek a new program consistent with the student’s athletic abilities) and to individuals who would seek to recruit student athletes to attend a particular school for the purpose of building athletic strength” and serves “as a deterrent to students running away from or avoiding an athletic conflict or discipline that has been imposed (Philosophy, IHSA 2010-11 By-Laws & Articles of Incorporation, page 70.)], the Philosophy of the Transfer Rule ^{FN7} [FN7 The Philosophy if[sic] the Transfer Rule is located at the beginning of Rule 19 (see, IHSA 2010-11 By-Laws & Articles of Incorporation, pages 69-70).] sets out other purposes and goals of the Transfer Rule. Further, in order to prevail on the first criteria[sic] of 17-8.1, [Petitioner] must show, by clear and convincing evidence, that there is no athletic motivation in the transfer and that most of the other purposes and goals of the Transfer Rule will not be advanced by strict application to [Petitioner]. Here, there is evidence of athletic motivation, and so [Petitioner] fails to meet the first criteria[sic]. And second, a majority of the other purposes and goals of the Transfer Rule are advanced by application to this student, and so [Petitioner] fails the second criteria[sic]:

- i. *The Transfer Rule will “protect the opportunities of bona fide resident students to participate” in their athletic program. Here, a student who qualifies for limited eligibility should not displace an existing bona fide varsity student athlete who has invested time, energy and talent into such varsity athletic program, and in [Petitioner’s] cases, without application of the transfer rule, he would displace an existing bona fide varsity student athlete who had invested time, energy and talent in Day’s varsity athletic program. Strict application will advance a purpose of the rule.*
- ii. *The Transfer Rule provides “a fundamentally fair and equitable framework in which interschool athletic competition can take place” and student athletes who are making decisions about school enrollment and withdrawal will have knowledge of the impact of the Transfer Rule when it is enforced fairly, uniformly and consistently. In [Petitioner’s] case, he knows that he can enroll in the school of his choice and can benefit from the school environment, but also knows that because of the Transfer Rule, he will be eligible for the same level of participation as all similar non-moving transfer students, namely limited eligibility. Strict application will advance a purpose of the rule.*
- iii. *The Transfer Rule provides “uniform standards for all schools to follow in maintaining athletic competition” by establishing boundaries on student athletes’ movements between schools so that a disproportional pool of talent does not, by design or otherwise, reside at a particular school. In [Petitioner’s] case, by uniformly enforcing the Transfer Rule, Day School’s varsity basketball pool will not be deepened with [Petitioner’s] participation. Strict application will advance the purpose of the rule.*
- iv. *The Transfer Rule supports “the educational philosophy that athletics is a privilege which must not be permitted to assume a dominant position in a Student’s or school’s program” and keeps “the focus of educators and students on the fact that students attend school to receive an education first and participate in athletics second.” In [Petitioner’s] case, the motive for the transfer appears to be athletic, which means that it has assumed a dominant position in his high school agenda and by enforcing the Transfer Rule it will focus [Petitioner’s] attention on his education, and therefore, strict application will advance a purpose of the rule.*

- v. *The Transfer Rule will “maintain the fundamental principal that a high school student should live at home with his/her parents or legally-appointed guardian (if the parents are deceased) and attend school in the school district in which the parents or guardians live” and “reinforces the view that the family is a strong and viable unit in our society, and as such, is the best place for Students to live while attending high school.” Here, since [Petitioner] continues to reside with his parents, strict application will not advance this purpose of the rule.*
- vi. *The Transfer Rule protects “school programs from losing any students who have established an identity as an athlete and, as such, are contributors to the overall school program and image. Here, [Petitioner] had established an identity and had contributed to the Harrison basketball program. Strict application will advance a purpose of the rule.*

The Committee concludes that the first question cannot be answered in the affirmative.

- b. *Has the student shown that waiving the rule will not violate the spirit of the Transfer Rule (rule 17-8.1(b))?*
[Petitioner] fails to establish that the spirit of the Transfer Rule would not be violated by permitting immediate full eligibility. An underlying goal of the Transfer Rule is to discourage recruitment and school jumping, which is accomplished, in part, by limiting or denying eligibility to a student whose transfer is not the result of circumstances which are beyond the control of the student or the student’s parent(s); rule 17-8.4 explains that a rule cannot be set aside under 17-8.1 if the reason for the failure to meet an eligibility requirement is predicated on a choice. The harshness of the rule is ameliorated by granting limited eligibility to nonmoving transfer students when the transfer is not primarily for athletic reasons.

The condition causing [Petitioner’s] failure to meet the full eligibility requirements (Rule 19-5) was because his transfer was not accompanied by a corresponding change of residences by his mother. The stated reason for the transfer was the result of choice, namely, [Petitioner] chose to change schools to purportedly obtain an academically superior program at Evansville Day. Moreover, the unstated reason for the transfer was also the result of a choice, namely, [Petitioner] chose to change schools to escape the athletic problems at Harrison. And since the condition (the transfer) was not the result of something which was beyond the control of [Petitioner] or his parents, granting waiver and allowing full eligibility will violate the spirit of the Transfer Rule.

The Committee concludes that the second question cannot be answered in the affirmative.

- c. *Has the student shown that an undue hardship will be suffered by enforcement of the Transfer Rule (rule 17-8.1(c))?*
[Petitioner] fails to establish that there is in his case circumstances showing an undue hardship would result from enforcement of the Transfer Rule. Ordinary cases of hardship are not subject to a rule 17-8.1 ruling, and a decision which simply restricts athletic eligibility from full to limited, for a short period of time, does not, in the opinion of the Review Committee, result in an undue hardship. Here, a limited eligibility ruling does not prohibit [Petitioner] from participating in athletics, it just restricts athletic participation to the junior varsity level, and since [Petitioner] can still participate in basketball, albeit on the junior varsity team, the decision will not result in an undue hardship. In addition, [Petitioner's] limited eligibility only runs through February 25, 2011, and provided at that time [Petitioner] is in compliance with all other eligibility rules, he will be fully eligible and will be able to play on the Evansville Day varsity basketball team beginning February 26, 2011, which means he would be eligible for the 2011 IHSAA Boys State Basketball Tournament Series, which begins sectional play on March 1, 2011

The Committee concludes that the third question cannot be answered in the affirmative.

7. *In addition to the fact that [Petitioner] fails to show that his circumstances meet the requirements of a waiver under rule 17-8.1, since there is evidence of athletic motivation, under rule 17-8.4(d), the Committee is constrained to grant [Petitioner] a waiver under 17-8.1, or to grant full eligibility.*

23. Petitioner filed an appeal of the IHSAA Review Committee's decision with the Case Review Panel on February 1, 2011.

CONCLUSIONS OF LAW

1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the

IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).

3. The Case Review Panel (Panel) has jurisdiction in this matter. The Panel is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 et seq. The Case Review Panel has jurisdiction when a student's parent refers the case to the panel not later than thirty (30) days after the date of the IHSAA decision. I.C. 20-26-14-6(b). In this matter, the IHSAA rendered a final determination of student-eligibility adverse to the student on October 15, 2010. Petitioner sought timely review on October 29, 2010. The Panel may uphold, modify, or nullify the IHSAA Review Committee's decision. I.C. 20-26-14-6(c)(3).
4. The Case Review Panel is not required to review the IHSAA determination *de novo*. The Case Review Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," I.C. 20-26-14-6(c)(2), not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. See I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.
5. The Case Review Panel reviews the IHSAA determination for arbitrariness or capriciousness. See Carlberg, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." Id. citing Dep't of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000, 1007 (Ind. 1989). Additionally, the Case Review Panel reviews whether an IHSAA decision is "not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction,

authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.” See I.C. 20-26-14-7(c).

6. The IHSAA Review Committee’s interpretation of Rule 19-6.2 is not a fair and logical interpretation of the association’s rule. The IHSAA Review Committee finds that Rule 19-6.2 requires the IHSAA to rule that the Petitioner has limited eligibility under the circumstances. However, Rule 19-6.2 reads, in part, that a “student who transfers without a corresponding change of residence . . . may be declared to have limited eligibility.” Rule 19-6.2 does not require a limited eligibility determination but only permits one. If a “shall” requirement is read into Rule 19-6.2, then Rule 19-6.2 will conflict with Rule 19-3 (which allows the principal of the receiving school and the IHSAA to jointly approve full eligibility regardless as to whether a student receives limited eligibility under Rule 19-6.2).
7. The IHSAA Review Committee’s application of Rule 19-4 is arbitrary and capricious and unsupported by substantial evidence. The IHSAA Review Committee finds that Petitioner’s transfer was not motivated by primarily athletic reasons because Harrison recommended limited eligibility. The recommendation of the sending school is not an element of Rule 19-4 and does not fall within the definition of “primarily athletic reasons,” which includes, but is not limited to:
 - a. *a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;*
 - b. *a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;*
 - c. *a transfer seeking a team consistent with the student’s athletic abilities;*
 - d. *a transfer to obtain a means to nullify punitive action taken by the previous school.*(IHSAA By-Laws & Articles of Incorporation, p. 70).

Even if the recommendation of the sending school was an element of Rule 19-4, which it is not, the IHSAA Review Committee finding as it relates to Harrison’s recommendation is unsupported by substantial evidence. The IHSAA Review Committee finds that Harrison recommended limited eligibility because of “other evidence” including “most likely Petitioner’s academic struggle . . .” No substantial evidence exists in the record to

demonstrate the reasons for Harrison's recommendation of limited eligibility.

Rather, the IHSAA Review Committee finds that there is "significant evidence" that the transfer was "almost exclusively athletically motivated," including Petitioner's continuous complaints about Coach Speer and the Harrison coaching staff, complaints about Petitioner not receiving playing time, and the timing of the discussion surrounding Petitioner's transfer. This evidence is in the record. The evidence establishes that Petitioner transferred for primarily athletic reasons. Because the recommendation of the sending school is not an element of Rule 19-4, and because the only other evidence the Committee uses in their finding demonstrates a violation of Rule 19-4, the Case Review Panel concludes that Petitioner's transfer violated Rule 19-4, transferring primarily for athletic reasons.

8. The IHSAA Review Committee's interpretation and application of Rule 17-8.1 is arbitrary and capricious and not a logical interpretation and application of the association's rule. Rule 17-8.1 allows the Committee to set aside the effect of any rule when the student demonstrates that:
 - a. *Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;*
 - b. *The spirit of the Rule has not been violated; and*
 - c. *There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.*
- (a) The Committee's interpretation and application of Rule 17-8.1(a) is not fair or logical and leads to an arbitrary and capricious decision. The Committee requires the Petitioner to establish that there was "no athletic motivation" because the "primary purpose" of the Transfer Rule is to deter students who would transfer to another school for athletic reasons. The requirement that Petitioner demonstrate that "no" athletic motivation exists is an arbitrary standard higher than that required by the Transfer Rule. The Transfer Rule distinguishes between students who transfer but might have "some" athletic motivation and those students who transfer "primarily" for athletic reasons. It is possible that the IHSAA could find that a transfer wasn't primarily athletically motivated (and even grant full eligibility), even though "some"

athletic motive exists. In fact, the IHSAA Review Committee attempted as much in their application of Rule 19-4, above. Thus, to require Petitioner to demonstrate that “no” athletic eligibility existed is to place a higher standard than the one set forth in the Transfer Rules.

Additionally, the Committee also requires Petitioner to establish that “most of the other purposes and goals of the Transfer Rule will not be advanced by strict application” to Petitioner. The Committee defines the “other purposes and goals” as the “philosophies” enumerated in Rule 19. The Committee analyzed eight of the remaining nine “philosophies” and determined that because five of the philosophies will be served, the Petitioner failed to prove the condition. However, this analysis inadvertently shifts the burden to the IHSAA to demonstrate the purposes have been served, as opposed to requiring that Petitioner demonstrate that the purposes will not be served. This is a dispositive error, as the burden is on Petitioner to establish all the conditions of Rule 17-8.1 have been met and the “burden is on the party seeking the hardship,” Rule 17-8.4(e). Thus, because the Committee’s interpretation of the Rule shifts the burden of proof to the IHSAA, the Committee’s holding relative to Rule 17-8.1 is arbitrary, capricious, and not a fair and logical interpretation of the rule.

Even if the IHSAA had the burden to prove the purposes of the Rule have been met, which it does not, the Committee arbitrarily analyzed only eight of the remaining nine “philosophies.”

Additionally, the Committee’s decision misstates rules and includes conclusions unsupported by substantial evidence:

- (i) The Committee determines in Conclusion 6(a)(i) that Philosophy (1) applies to bona fide resident students who participate in “varsity” athletics, not junior varsity athletics. Therefore the Committee finds, by granting Petitioner limited eligibility to play junior varsity, the decision protects bona fide resident varsity students. The Committee, however, misstates Philosophy (1), which reads that the Transfer Rules “protect the opportunities of bona fide students to participate.” The rule does not

require the students to be “resident students.” Most importantly, the rule does not distinguish between varsity and junior varsity athletics. Contrary to the Committee’s interpretation, any decision awarding limited eligibility and junior varsity play does not serve Philosophy (1) because a junior varsity player may be displaced. Thus, evidence in the record that demonstrates that Petitioner’s limited eligibility allows for him to displace a junior varsity student is evidence that establishes that the purpose of the rule has not been served.

Even if the philosophy did make a varsity/junior varsity distinction, which it does not, the Committee’s Philosophy (1) analysis is not supported by substantial evidence. The Committee concludes that granting Petitioner full eligibility would “result in the displacement of an existing bona fide varsity student athlete who had invested time, energy, and talent in Day School’s varsity athletic program.” No substantial evidence of such displaced student exists in the record.

- (ii) The Committee concludes in Conclusion 6(a)(iii) that Philosophy (3) seeks to prevent a disproportionate talent pool at any particular school and that strict enforcement of the Transfer Rule prevents Day School’s varsity basketball pool from being deepened. Rule 19 Philosophy (3) states that the Transfer Rules “provide uniform standards for all schools to follow in maintaining athletic competition” and does not make a distinction between varsity talent pool and the junior varsity talent pool. The Committee seeks to grant Petitioner junior varsity status, thus deepening Day School’s total talent pool at the expense of Harrison. Therefore, the philosophy is not being served by strict enforcement as concluded by the Committee. Additionally, even if the philosophy made the varsity/junior varsity distinction, no substantial evidence exists on the record regarding the respective depths of the Day School and Harrison athletic pools of talent.

- (b) The Committee's interpretation of Rule 17-8.1(b) is not logical and creates a floating evidentiary standard that leads to an arbitrary application of the rule. Because "hardship" is not defined, the Committee incorrectly reads a 17-8.4(a) hardship element into the spirit of the Transfer Rule.

Rule 17 does not adequately define what constitutes a "hardship." Rule 17-8.4 states that hardships are not "ordinary" and occur when circumstances leading to the failure to meet eligibility requirements are beyond the student's control. A few examples include injury, illness, accidents, or a change in the financial condition of the student. This vague definition of what constitutes a "hardship" leads to an arbitrary and capricious application and interpretation of the rules.

For example, a hardship requires that the circumstances be "beyond the student's control," thus, the requirement could be considered part of the "spirit" of the Hardship Rule. See Rule 17-8.4(a). But, the Committee's decision does not require that the circumstances be "beyond the student's control" when determining whether a hardship exists. Rather, the Committee applies "beyond the control" as a requirement of the Transfer Rule,³ essentially holding that the spirit of the Hardship Rule and the spirit of the Transfer Rule are synonymous. While the "control" requirement exists in the Hardship Rule, the requirement does not generally exist in the Transfer Rule; to read it into the spirit of the Transfer Rule creates contradictory and illogical results.

According to the Committee, the spirit of the Transfer Rule is to discourage recruitment and "school jumping" by determining whether circumstances leading to the transfer were beyond the student's control. To be sure, the spirit of the Transfer Rule is, at least in part, to discourage recruitment and "school jumping" for athletic purposes. However, one has a more difficult time finding in the Transfer Rule the requirement that circumstances must be "beyond the student's control" in order to be granted full eligibility through the Transfer Rule.

³ The spirit of any rule is defined within that rule, or by reading the rule as a whole to determine the intent of the rule. The Committee, we assume, is not suggesting that a required hardship element is the *de facto* spirit of all other rules in the By-laws. Therefore, we analyze whether "control" is an element within the spirit of the Transfer Rule according to the language of the Transfer Rule.

On the contrary, the Transfer Rule does not require that circumstances always be beyond the student's control. Limited eligibility granted under Rule 19-6.2 does not require uncontrollable circumstances. Neither do other grants of eligibility: Rule 19-5.1 grants a student full eligibility if a student chooses to move into a different school district (the student receives full eligibility even though the circumstances were within the student's control); and Rule 19-3, which allows the receiving school and the IHSAA to award full eligibility with no requirement that circumstances be beyond the student's control. Throughout the entire Rule 19, the "control" element is only required when a student moves between divorced parents or moves to guardian or foster homes. The Committee, however, would define the spirit of the Transfer Rule to include a control element for all Rule 19 transfers, including Petitioner's current case, even though these transfers are motivated by neither divorce nor guardianship.

Moreover, the Transfer Rule had previously included a broad "control of the student" requirement, but the IHSAA has recently removed such requirements from the Transfer Rule. As late as 1992, Rule 19-6 had required a student to establish the occurrence of "event(s) outside the control of the student . . ." if the student transferred with a corresponding change of address. See Crane v Indiana High School Athletic Ass'n, 975 F.2d 1315, 1321 (7th Cir. 1992). The IHSAA has since removed this requirement from the Transfer Rule. To read into the "spirit of the Transfer Rule" a requirement that an otherwise transfer-eligible student establish that circumstances were beyond his or her control is to read back into the By-laws that which had been previously written out.

Thus, because no definition of hardship exists, the Committee pirouettes around the Petitioner's circumstances, and applies them to the spirit of the Transfer Rule in lieu of determining whether the circumstances themselves led to a hardship under Rule 17-8.1(c). As will be discussed, the distinction is of critical importance in properly applying state case law. The IHSAA should require Petitioner prove a hardship exists based on clearly defined criteria rather than attempting to nest one hardship

requirement into the spirit of another rule to circumvent their vague hardship definition.

- (c) The Committee interpretation of Rule 17-8.1(c) is not a fair and logical interpretation. Rule 17-8.1(c) requires the party to establish that “there exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.” In applying this requirement to the Transfer Rule, Indiana courts require a Petitioner to demonstrate that he or she:

“would face a hardship if [Petitioner] had to [play] at the junior varsity level because through no fault of his own and without any athletic motivation, [Petitioner] was forced to transfer schools because of [the circumstances leading to the transfer].

Indiana High School Athletic Ass’n v. Durham, 748 N.E.2d 404,414 (Ind. Ct. App. 2001).

In Durham, the court found that the Rule 17 hardship exemption applied and the IHSAA determination to be arbitrary and capricious, after a student moved as a result of his mother’s financial burden from a divorce. The court did not require that the student demonstrate that harm occurred from receiving limited eligibility as opposed to full eligibility. Rather, the court relied on the circumstances that caused the Transfer Report to be filed to establish a hardship.

The Committee disregards the court’s application and ignores the circumstances leading to the transfer when determining whether this matter is a hardship case under Rule 17-8.1(c). Instead the Committee holds that the “decision which simply restricts athletic eligibility from full to limited, for a short period of time, does not, in the opinion of the Review Committee, result in an undue hardship.” Essentially, the Committee holds that because their order for limited eligibility does not create too much of a harm, the hardship determination resulting in limited eligibility is supported by substantial evidence.⁴ This allows the effect of a ruling to justify the ruling itself.

⁴ The IHSAA, however, is not required under Rule 19-6.2 to apply limited eligibility in this case, as Rule 19-6.2 is permissive, not required. See Conclusion of Law 6, herein. The IHSAA and the receiving school could agree to full

The Committee's interpretation of Rule 17-8.1(c) adds a burden not required by the courts. In Durham, the court did not require the party to establish harm as a result of the IHSAA decision after the transfer. Rather, the court exclusively considered the circumstances leading to filing of the Transfer Report. The court analysis parallels Rule 17-8.4: illness, injury, accidents, and financial conditions may lead to a hardship regardless as to whether an IHSAA limited eligibility holding creates any harm at all. By requiring Petitioner to demonstrate in Rule 17-8.1(c) that a hardship existed after the transfer, paired with requiring Petitioner to demonstrate in Rule 17-8.1(b) that circumstances before the transfer were beyond the student's control, the Committee placed a burden on the Petitioner to prove two hardships: one before and one after the determination.

In fact, if the Committee's interpretations of Rule 17-8.1(b) and (c) were logical, which they are not, a student could almost never prove a hardship. First, if the IHSAA granted limited eligibility, then the circumstances creating a "post transfer" hardship would be beyond the student's control, except when the IHSAA wished to claim the spirit of the Transfer Rule was previously violated. Second, if a student could prove that playing junior varsity sports instead of varsity sports constituted a hardship, then that very demonstration proves that the request is made for athletic purposes, and the hardship is precluded. The student thus experiences Escher's Relativity: the direction they must step to demonstrate a condition disproves another condition.

9. The IHSAA Review Committee interpretation and application of Rule 17-8.4(d) is unsupported by substantial evidence. The Committee concludes that some evidence exists that Petitioner transferred due to athletic motivation. Rule 17-8.4(d) states that if a move is motivated "in part, by athletic reasons, albeit not for primarily athletic reasons, it is unlikely that the student will qualify for a hardship," but the rule does not require disqualification. In their Conclusion 7, the Committee determines that there is some evidence of athletic motivation, but does not describe which evidence, if any, supports

the determination. It is important to note, as well, that the IHSAA's practice of including some evidence of athletic motivation when the IHSAA Transfer Report did not initially reference athletic motivation, or when the Committee determines that the transfer was not primarily motivated by athletics, has come under scrutiny:

"This practice was denounced in Martin, 731 N.E.2d at 11, which noted that the IHSAA uses the possibility of an athletically-motivated transfer, although admittedly not primarily athletically motivated, as a 'poison pill' to keep students from receiving a hardship exception even if there is no substantial evidence to that effect."

Durham, 748 N.E.2d at 414 (citing IHSAA v. Martin, 731 N.E.2d 1, 11 (Ind. Ct. App. 2000)).

ORDER

Because Petitioner violated Rule 19-4 and transferred for primarily athletic reasons, the IHSAA Review Committee order is hereby amended by a vote of 7-0 and Petitioner is ineligible to participate in interschool athletics until February 25, 2011.⁵

DATE: February 15, 2011

//SIGNED

Matthew Tusing, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.

⁵ The penalty for violating Rule 19-4: the student will "become ineligible to participate . . . for a period not to exceed 365 days from the date the student enrolls at the new school . . ." Petitioner is ineligible until February 25, 2011, which is a period that does not exceed 365 days from the date Petitioner started classes at Day School (August 15, 2010).